



October 4, 2004

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

**Re: Petition for Declaratory Ruling; CC Docket Nos. 98-141 and 98-184**

Dear Ms. Dortch:

Attached are comments of the Association for Local Telecommunications Services (“ALTS”) for filing in the above-captioned proceedings.

Sincerely,

/s/

Teresa K. Gaugler

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Declaratory Ruling; CC Docket	)	CC Docket Nos. 98-141 and 98-184
Nos. 98-141 and 98-184	)	
	)	

**COMMENTS OF THE  
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services (“ALTS”) hereby files its comments in the above-referenced proceeding in response to the Commission’s Public Notice<sup>1</sup> regarding the Petition for Declaratory Ruling filed by thirty-seven CLECs (“CLEC Petition”). ALTS supports the CLEC Petition, which requests the Commission affirm that Verizon and SBC remain obligated to provide UNEs pursuant to their respective merger orders.<sup>2</sup>

**I. MERGER CONDITIONS ARE STILL VITAL TO PROTECT THE PUBLIC INTEREST.**

In granting the mergers of Bell Atlantic/GTE and of SBC/Ameritech, the Commission stressed that without conditions each merger posed significant potential harm to the public interest.<sup>3</sup> To ameliorate that potential risk, the Commission required Verizon and SBC each to

---

<sup>1</sup> *Pleading Cycle Established for Comments on Petition for Declaratory Ruling*, CC Docket Nos. 98-141 and 98-184, Public Notice (rel. Sept. 14, 2004).

<sup>2</sup> Petition for Declaratory Ruling, CC Docket Nos. 98-141 and 98-184 (filed Sept. 9, 2004) (“CLEC Petition”).

<sup>3</sup> *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission’s Rules*, CC Docket No. 98-14, Memorandum Opinion and Order, FCC 99-279, ¶ 348 (1999) (“*SBC/Ameritech Merger Order*”); *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221, ¶ 246 (2000) (“*Bell Atlantic/GTE Merger Order*”).

comply with certain conditions, including continuing to provide UNEs that were available at the time of their respective mergers until the Commission developed unbundling rules in a final and non-appealable order.<sup>4</sup> Without such definitive unbundling requirements, the Commission knew that the harmful impact of the mergers could be dramatic.

The Commission further highlighted its obligation under the Telecommunications Act to ensure that each merger remains beneficial to the public in the event that SBC or Verizon refused to comply with those conditions.<sup>5</sup> As the CLEC Petition shows, both SBC and Verizon have recently indicated their intentions to violate the merger conditions by refusing to provide access to UNEs as required by their respective merger orders.<sup>6</sup> The RBOCs have argued that the D.C. Circuit's vacation of the Commission's *Triennial Review Order* terminated those conditions; however, the Commission has made clear that a vacation of its unbundling rules would, in fact, invoke – not terminate – the conditions. The Commission highlighted in the *Verizon Merger Order* that the conditions would only have practical effect if the Commission's unbundling rules were stayed or vacated, which is where we find ourselves today.<sup>7</sup> The Commission must enforce those conditions as intended to “reduce uncertainty to competing carriers from litigation that may arise.”<sup>8</sup> The Commission emphasized that it would “use every available enforcement mechanism ... to ensure compliance with these conditions,”<sup>9</sup> and it must not shirk that duty now.

---

<sup>4</sup> *SBC/Ameritech Merger Order* ¶ 394; *Bell Atlantic/GTE Merger Order* ¶ 316.

<sup>5</sup> *SBC/Ameritech Merger Order* ¶ 360; *Bell Atlantic/GTE Merger Order* ¶ 256.

<sup>6</sup> CLEC Petition at 6-7.

<sup>7</sup> *Bell Atlantic/GTE Merger Order* ¶ 316.

<sup>8</sup> *Id.*

<sup>9</sup> *SBC/Ameritech Merger Order* ¶ 360; *Bell Atlantic/GTE Merger Order* ¶ 256.

Relinquishing SBC and Verizon from their merger conditions would be catastrophic to the still-struggling local telecom market. In recently adopting interim unbundling rules, the Commission stressed how disastrous a gap in the RBOC provision of UNEs would be to competitive carriers and their customers: “temporary withdrawal of access to UNEs that the Commission ultimately might find to be subject to section 251(c)(3) would threaten irreparable - and perhaps debilitating - harm to competitive LECs, which rely on such elements to serve their customers, and which might well be unable to recapture customers lost during a UNE-free interim period.”<sup>10</sup> Thus, the Commission affirmed in the *Interim Order* that the impetus for adopting the merger conditions still exists as much today as it did several years ago when the conditional mergers were approved. ALTS urges the Commission to grant the CLEC Petition and to direct SBC and Verizon to comply with the requirements of their respective merger orders.

## **II. MERGER CONDITIONS ARE CRUCIAL TO ENSURING NECESSARY REGULATORY CERTAINTY.**

The Commission has continually recognized that regulatory certainty is vital for local competition to thrive. In recently adopting interim unbundling rules, the Commission stressed that without action to stabilize the regulatory regime, the local telecommunications market would be unnecessarily placed at risk, jeopardizing facilities-based competition and consumers, both of which the Commission is charged with protecting under the Telecommunications Act.<sup>11</sup> “[T]he disruption that would accompany a chaotic transition period would undermine the very

---

<sup>10</sup> *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313 and CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, ¶ 14 (rel. Aug. 20, 2004) (“*Interim Order*”).

<sup>11</sup> *Id.* ¶ 1-2.

competition that was the objective of *USTA II*.<sup>12</sup>

The Commission has emphasized that its “primary goal in implementing section 251 is to advance the development of facilities-based competition.”<sup>13</sup> ALTS, as the leading trade association for facilities-based carriers, has repeatedly argued that CLEC investments and business plans are at risk when ILEC unbundling requirements are unclear.<sup>14</sup> The Department of Commerce also supported the Commission’s adoption of clear interim rules “to protect consumers and ensure appropriate competitive access to local networks.”<sup>15</sup> Even the RBOCs themselves have recognized and supported the need for regulatory certainty and maintenance of status quo. SBC committed to maintain status quo for wholesale prices after *USTA II* in order “[t]o help ensure stability and continuity during this important transition ... and to help assure regulators, policymakers and consumers that there will be no marketplace disruption during the transition....”<sup>16</sup> The other three RBOCs also filed letters committing to maintain some measure of certainty and status quo regarding their provisioning of UNEs until the Commission adopts permanent rules. Furthermore, Qwest petitioned the Commission to adopt its own interim rules because they would “provide service and pricing continuity to CLECs and their customers,

---

<sup>12</sup> *Id.* ¶ 20.

<sup>13</sup> *Id.* ¶ 2.

<sup>14</sup> See *ALTS Calls On FCC To Prevent Disruption For Consumers And Small Business Customers*, Press Release (rel. June 23, 2004) and Letter from John Windhausen, Jr., President, ALTS, to Michael Powell, Chairman, FCC (filed June 23, 2004), both available at <http://www.alts.org/NewsPress/062204PR> Powell TRO ltr.pdf.

<sup>15</sup> Letter from Michael D. Gallagher, Acting Asst. Secretary, NTIA, to Michael Powell, Chairman, FCC (filed June 16, 2004).

<sup>16</sup> Letter from Edward E. Whitacre Jr., Chairman and CEO, SBC, to Michael K. Powell, Chairman, FCC (filed June 9, 2004).

regardless of whether or not the Circuit Court's decision is heard on appeal."<sup>17</sup> Thus, there is unmistakable agreement that regulatory certainty is desirable in the marketplace.

Without an interim plan, the Commission was concerned (and rightly so) that the RBOCs would prematurely terminate their existing UNE arrangements with CLECs, despite their voluntary commitments to maintain some measure of status quo.<sup>18</sup> "The absence of clear rules [] threatens to disrupt the business plans of competitive carriers and their service to millions of customers that rely on competitive service offerings. This is a risk to the public interest too great to bear unheeded."<sup>19</sup> For the same reasons that the Commission adopted its interim unbundling rules, it must grant the CLEC petition and enforce the merger conditions on SBC and Verizon, especially considering that the Commission's *Interim Order* may be vacated by the D.C. Circuit in response to the Petition for Mandamus.<sup>20</sup> Such a result would leave the local telecom industry in turmoil, and the Commission must ensure that at least in the SBC and Verizon regions, CLECs and their customers continue to have certainty as to what facilities and services they will receive. In the event that the D.C. Circuit does vacate the interim rules, granting this petition would ease the public harm in those regions. Furthermore, the Commission will be adopting permanent unbundling rules soon, and despite the Commission's best efforts, these rules are likely to be contested and litigated by parties rather than creating settled legal requirements in

---

<sup>17</sup> *Qwest Communications Files Petition with FCC for Interim Rules on Wholesale Products and Pricing* Press Release (rel. March 30, 2004), available at [http://www.qwest.com/about/media/pressroom/1,1720,1470\\_archive,00.html](http://www.qwest.com/about/media/pressroom/1,1720,1470_archive,00.html).

<sup>18</sup> *Interim Order* ¶ 10.

<sup>19</sup> *Id.* ¶ 18.

<sup>20</sup> CLEC Petition at 9.

the near-term. Thus, similar to the section 271 unbundling obligations, the merger conditions are important backstops as the Commission's rules remain unsettled or potentially erode section 251 unbundling requirements.

Finally, as the CLEC Petition stresses, regulatory certainty is important for all parties involved, not just competitive carriers. SBC and Verizon need to know their obligations, and more importantly, they need to know that if they violate those requirements, the Commission will act swiftly to enforce its rules. To avoid any uncertainty for the Commission's own Enforcement Bureau taking action regarding these merger conditions, the Commission must affirm SBC's and Verizon's obligation to continue complying with them. Additionally, state regulators need certainty as to what unbundling rules to implement in their arbitration proceedings. Furthermore, several state commissions have specifically requested that CLECs seek this action from the Commission and are waiting for the Commission to act.<sup>21</sup>

### **CONCLUSION**

For the foregoing reasons, ALTS urges the Commission to grant the CLEC Petition for Declaratory Ruling and affirm that Verizon and SBC remain obligated to offer UNEs pursuant to their respective merger orders.

Respectfully Submitted,

**Association for Local  
Telecommunications Services**

By: /s/\_\_\_\_\_

Jason D. Oxman, General Counsel  
Teresa K. Gaugler, Assistant General Counsel

---

<sup>21</sup> *Id.* at 7-8.

Comments of ALTS  
CC Docket Nos. 98-141 and 98-184  
October 4, 2004

888 17<sup>th</sup> Street, NW, Suite 1200  
Washington, DC 20006  
(202) 969-2587

October 4, 2004